

United States Court of Appeals For the First Circuit

No. 20-1418

UNITED STATES,

Appellee,

v.

DOUGLAS HODGE,

Defendant - Appellant.

ORDER OF COURT

Entered: May 4, 2020

Defendant-Appellant Douglas Hodge has filed an "Assented-to Motion to Stay Appellate Proceedings Pending Resolution of Related District Court Proceedings," through which he requests that this court stay his direct criminal appeal while the district court adjudicates his not-yet-filed motion pursuant to 28 U.S.C. § 2255.

"In the absence of extraordinary circumstances, the orderly administration of criminal justice precludes a district court from considering a § 2255 motion while review of the direct appeal is still pending." United States v. Gordon, 634 F.2d 638, 638-39 (1st Cir. 1980). However, a district court may, upon a finding of "extraordinary circumstances," proceed to adjudicate a habeas petition while a direct appeal is pending. See, e.g., United States v. Diaz-Martinez, 71 F.3d 946 (1st Cir. 1995).

With these precepts in mind, Hodge's motion to stay is resolved as follows. This appeal will be temporarily stayed pending further order of court. Once the forecast § 2255 motion has been filed in the district court, that court promptly should enter an order reflecting its assessment as to whether there are "extraordinary circumstances" warranting immediate adjudication of the § 2255 motion despite the pendency of a direct criminal appeal. The court expresses no view on this question. Upon notice from Hodge that the district court has made a determination, this court, in turn, will determine whether the appeal should be stayed pending adjudication of the § 2255 motion.

In the meantime, Hodge should file status reports at 30-day intervals, the first due 30 days from entry of this order, and also should alert the court immediately when relevant filings or rulings are made in the district court.

By the Court:

Maria R. Hamilton, Clerk

cc:

Carol Elisabeth Head
Donald Campbell Lockhart
Karin Michelle Bell
Andrew E. Lelling
Kristen A. Kearney
Stephen Emanuel Frank
Justin David O'Connell
Eric Rosen
Alexia R. De Vincentis
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